

Regulatory Impact Statement

Requiring non-resident IRD number applicants to have a New Zealand bank account

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by Inland Revenue. It provides an analysis of options on whether to continue with the requirement for offshore persons to open a New Zealand bank account before they are issued with an IRD number.

Officials have been provided evidence from a range of stakeholders that the bank account requirement is making it difficult in a number of cases for people to comply with their New Zealand tax obligations. We have anecdotal evidence of the impact of this restriction but are unable to determine the full extent of its impact on the New Zealand tax system and wider economy.

Targeted consultation was undertaken with Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, New Zealand Bankers' Association and the New Zealand Law Society, who represent the majority of those affected by the requirement. All respondents have welcomed the review. There was no support for the status quo and all submitters supported reform. Evidence of further examples where the bank account requirement is causing difficulties has been provided.



Peter Frawley
Policy Manager, Policy and Strategy
Inland Revenue

30 November 2016

STATUS QUO AND PROBLEM DEFINITION

Introduction of the bank account requirement

1. A law change effective from 1 October 2015 requires all offshore persons to provide evidence of a current New Zealand bank account before an IRD number can be issued to them. This requirement was brought in as part of a suite of initiatives announced in Budget 2015 related to property transactions and to assist Inland Revenue in enforcing compliance with these rules.
2. The Budget 2015 property changes included:
 - Requiring all parties to a property transaction to provide an IRD number to Land Information New Zealand as part of the transaction process (unless subject to an exemption)
 - Requiring all offshore persons to provide evidence of a functioning New Zealand bank account before obtaining an IRD number
 - The two year bright-line test for sales of residential property
 - Residential land withholding tax
3. The bank account requirement has proved to be difficult to comply with for a number of offshore persons. As these offshore persons find it difficult or impossible to comply with the requirement, they are unable to get an IRD number, and in many cases to account for their New Zealand tax liability.
4. The bank account requirement can also affect sales of New Zealand property owned by offshore persons. Land Information New Zealand requires an IRD number to be provided for all property transfers, unless the transfer is subject to an exemption. This is one of the Budget 2015 property changes noted above.
5. A number of offshore persons may require an IRD number to be processed urgently or without delays, in order to meet their New Zealand tax obligations on time.

An “offshore person”

6. For the purposes of the bank account requirement an “offshore person” includes both individuals and non-individuals.
7. An individual is an offshore person if they are:
 - not a New Zealand citizen and do not hold a residence class visa granted under the Immigration Act 2009; or
 - a New Zealand citizen who is outside New Zealand and has not been in New Zealand within the last 3 years; or
 - a holder of a residence class visa granted under the Immigration Act 2009, who is outside New Zealand and has not been in New Zealand within the last 12 months.
8. A non-individual, such as a company or a trust, is an offshore person if they are 25% or more controlled or owned by an offshore person.

Identity verification

9. At the time the bank account requirement was introduced, the Government considered that requiring offshore persons to have a New Zealand bank account would provide Inland Revenue with confidence that it knew who it was dealing with by requiring the identity verification rules in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (“AML Act”) to apply to all offshore persons applying for an IRD number, whether for the reason of transactions involving New Zealand property or any other reason.

10. Currently when a non-resident or offshore individual (form IR742) or non-individual (form IR744) applies for an IRD number, they must provide the Commissioner with the following information:

- Their names
- Date of birth for individuals
- Type of organisation for non-individuals
- Photographic identification for individuals
- Proof of their current address, or the most recent previous address
- Contact details
- Proof of any intended activity in New Zealand for individuals
- Overseas taxpayer identification number
- Business description and code for non-individuals
- Copy of a certificate of incorporation for companies
- A copy of certificate of registration, trust deed or agreement, or equivalent overseas constituting document for entities other than companies
- Details of the stock exchange listing for companies listed on a stock exchange
- Names, addresses and IRD numbers of shareholders, directors, partners and trustees (as applicable)
- Proof of a fully functional New Zealand bank account, or proof that customer due diligence has been completed by a New Zealand reporting entity under the rules in the AML Act

11. Individual offshore persons applying for an IRD number, who are in New Zealand at the time of applying, must personally present their identity documents for verification at an Inland Revenue office, New Zealand Automobile Association, or Kiwibank. Offshore persons not in New Zealand at the time of applying for an IRD number can apply by post or electronically. Those applying for an IRD number on behalf of non-individual offshore applicants, do not need to personally present their identity documents for verification and can apply by post or electronically.

12. Inland Revenue from time to time reviews its identity verification procedures, and changes them as may be required. This is done to ensure that the procedures remain robust and fit for purpose to keep pace with any developments. Another review is currently underway, with the particular focus on:

- Individual IRD number applicants who are not in New Zealand at the time of applying for an IRD number, and
- Non-individuals

13. Under the current anti-money laundering (AML) rules, financial institutions are required to perform customer due diligence and report suspicious transactions. The proposed Phase 2 of the AML measures will require a wider range of professionals, including New Zealand lawyers and conveyancers, to conduct customer due diligence on their clients. The Anti-Money Laundering and Countering of the Financial Terrorism Amendment Bill is expected to be implemented by 2020.

14. There are a limited number of exceptions from the bank account requirement. They are:

- When a person requires an IRD number only because they are a non-resident supplier of goods and services under the Goods and Services Tax Act 1985;
- When a reporting entity under the AML Act has conducted customer due diligence procedures for the offshore person.

15. The bank account requirement has also been simplified for non-resident seasonal workers (for example, workers who come from Pacific countries to pick fruit). They can use the NSW¹ tax code for the first month of their employment, even though they may not have an IRD number and/or a New Zealand bank account. After that month, an IRD number must be provided for the NSW tax code to continue to apply, and a bank account is then required.

16. During the last year, Inland Revenue has been approached by a number of organisations and individuals raising concerns with the current bank account requirement. The submitters advised that due to the difficulties associated with the opening of a bank account, offshore persons are unable to get an IRD number and, in turn, comply with their New Zealand tax liabilities.

17. In the March 2016 report on the Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill, which brought in the exceptions to the bank account requirement, the Finance and Expenditure Committee noted that it is aware of some practical difficulties with the bank account requirement. The Committee also noted that officials have undertaken to continue to work on solutions, whether legislative or operational, to address practical difficulties and unintended consequences.

18. A review of this requirement has been included in the recent refresh of the Tax Policy Work Programme. As part of the review, Inland Revenue has consulted with interested parties.

Issues with the bank account requirement

19. Inland Revenue has received a large volume of feedback from affected persons on the issues caused by the bank account requirement for obtaining an IRD number. There have been many cases where offshore persons have faced difficulties obtaining a bank account in

¹ NSW tax code has a deduction of 10.5%. Ordinarily, if no IRD number is provided, a “no-notification” tax deduction rate of 45% applies.

New Zealand, which stops them from getting an IRD number, and complying with their New Zealand tax obligations.

20. The issues that have been brought to officials' attention can be generally divided into the following categories:

- New Zealand banks are unwilling to issue bank accounts to offshore persons
- There can be delays for offshore persons in obtaining a New Zealand bank account
- The compliance costs of obtaining a New Zealand bank account are high

Banks unwilling to issue bank accounts

21. Banks are in a number of instances unwilling to open a bank account for people who are predominantly based overseas and who are not going to have on-going business with the bank. Opening an account for such persons is not cost-effective for the bank, as the cost of customer due diligence outweighs the benefits the bank may get from having them as a customer.

Delays in obtaining New Zealand bank accounts

22. Officials have been provided with a number of examples demonstrating that it can at times take between 4 to 6 months before a New Zealand bank account is issued to an offshore person.

Compliance costs

23. New Zealand banks and a number of submitters advised Inland Revenue that to open a bank account in New Zealand, personal presence here is required. In a number of cases, this can include having to fly to New Zealand from other parts of the world.

Scale of the problem

24. Between October 2015 and September 2016, Inland Revenue has issued the following quantum of IRD numbers:

- 101,646 IRD numbers for offshore/non-resident² individuals
- 1,582 IRD numbers for offshore/non-resident non-individuals
- 102,307 IRD numbers for resident individuals
- 93,781 IRD numbers for resident non-individuals

² Offshore refers to offshore persons under the definitions in paragraphs 7 and 8 of this RIS. Non-resident refers to persons who are not New Zealand tax resident. These definitions are not identical so it is possible to be an offshore person without being a non-resident and vice versa. As offshore persons and non-resident applicants are required to complete the same IRD number application form it is not possible to isolate the applicants who are offshore persons.

25. 4,512 of offshore/non-resident applications by individuals were sent back as they did not provide all of the required information.

26. Where all required information is not provided on the form, Inland Revenue first contacts the applicant by phone, email or post. In most cases when a contact is made, the issue is either resolved over the phone, or the applicant provides a copy of what is required. The overwhelming majority of the 4,512 applications that were sent back are attributed to the absence of a New Zealand bank account. Some of these applications could have been successfully resolved at a later stage.

27. Officials were advised by some large accounting firms that in a number of cases offshore persons decided not to apply for a New Zealand bank account at all, due to perceived difficulties associated with obtaining it. As a result, they had also not applied for an IRD number. The number of offshore persons affected in this way has not been provided to officials. Therefore, the total number of offshore applicants who experienced difficulties with the bank account requirement is likely to be greater than 4,512.

OBJECTIVES

28. The **main objective** of the review is to resolve in an efficient way the issues arising from the current requirement for offshore persons to have a New Zealand bank account before they can be issued with an IRD number.

29. All options are assessed against the status quo in relation to the main objective and the following criteria:

- (a) **Robustness of the identity checks:** The Commissioner should be satisfied with the identity of the offshore person applying for an IRD number.
- (b) **Economic efficiency:** People should not be prevented from complying with their tax obligations or completing commercial transactions by being unable to get an IRD number.
- (c) **Efficiency of compliance and administration:** The options should, to the extent possible, minimise compliance costs for taxpayers and administrative costs for Inland Revenue.

30. There is a trade-off between criteria (a) and (b) as preventing an IRD number being issued to the person until certain information is available can restrict the person's ability to comply with their New Zealand tax obligations. While these criteria must be balanced against each other it is most important that these requirements do not prevent compliance with New Zealand tax obligations or affect property sales. Criterion (c) is linked to criterion (b), as compliance with tax obligations can be undermined if the costs of compliance are perceived as high.

31. A constraint on the potential options is that Inland Revenue is not, and does not intend to become, an AML agent in its own right.

REGULATORY IMPACT ANALYSIS

32. Officials have identified four options to address the problem:

- Option 1 – The status quo
- Option 2 – Providing the Commissioner of Inland Revenue with a discretion to issue IRD numbers to offshore persons who do not have a New Zealand bank account
- Option 3 – Making further exceptions to the requirement for specific categories of offshore persons
- Option 4 – Removing the requirement for an offshore person to have a New Zealand bank account before they can be issued with an IRD number

Option 1

33. Option 1 is the status quo. Offshore persons would continue to be required to hold a functioning New Zealand bank account to obtain an IRD number.

Assessment against criteria – Option 1

34. Option 1 does not meet the main objective.

35. *Robustness of the identity checks.* Option 1 meets this criterion. The Commissioner can continue to rely on the customer due diligence processes undertaken by New Zealand banks before a bank account is issued to an offshore person.

36. *Economic efficiency.* Option 1 does not meet this criterion. In excess of 4,500 offshore persons had difficulties with or were unable to obtain an IRD number in the year to September 2016, which adversely affected their compliance with New Zealand tax obligations and affected sales of New Zealand property.

37. *Efficiency of compliance and administration.* Option 1 does not meet this criterion. A number of offshore persons are incurring high costs and suffering delays in getting a New Zealand bank account. As Inland Revenue is relying on the processes operated by financial institutions the administration costs are low.

Option 2

38. Option 2 would retain the bank account requirement but introduce a Commissioner's discretion to issue IRD numbers to offshore persons who do not have a New Zealand bank account. The key principle guiding the exercise of discretion would be that the Commissioner is satisfied as to the offshore person's identity.

Assessment against criteria – Option 2

39. Option 2 meets the main objective. It will allow the Commissioner to effectively deal with instances where issues with the bank account requirement arise.

40. *Robustness of the identity checks.* Option 2 meets this criterion. The Commissioner will only issue IRD numbers where she is satisfied with the identity of an offshore person.

41. *Economic efficiency.* Option 2 is better than the status quo. It will give the Commissioner sufficient flexibility to deal on a timely basis with a range of different cases where she has confidence in the identity of a person. Although a number of offshore persons who are unable to open a New Zealand bank account could get an IRD number if the Commissioner is satisfied with their identity, there would continue to be other offshore persons who are unable to get an IRD number when discretion was not exercised.

42. *Efficiency of compliance and administration.* Option 2 is better than the status quo for compliance costs, but worse than the status quo for administrative costs. Overall, we consider Option 2 the same as the status quo. Offshore persons' costs would reduce as they would be able to apply for the Commissioner's discretion instead. Administratively, Inland Revenue would have to allocate additional resources to consider the exercise of the discretion on a case-by-case basis. These additional administrative costs are not significant.

Option 3

43. Under Option 3, the bank account requirement would be retained but there would be further exceptions to the requirement for specific categories of offshore persons. Candidates for exceptions would be offshore persons or groups of offshore persons in relation to whom the risk resulting from not complying with the AML requirements is low. This would be an extension to the limited exceptions already in place.

Assessment against criteria – Option 3

44. Option 3 does not meet the main objective, as the exceptions process is not efficient to address issues of offshore persons who urgently need an IRD number.

45. *Robustness of the identity checks.* Option 3 meets this criterion. The Commissioner can continue to rely on the customer due diligence processes undertaken by New Zealand banks before a bank account is issued to an offshore person. Offshore persons subject to an exception may not be subject to the customer due diligence processes of a bank or another financial institution. Instead, the Commissioner will rely on her own identity checks.

46. *Economic efficiency.* Option 3 is an improvement on the status quo, but not as good as Option 2. Offshore persons who qualified for an exception would be able to obtain an IRD number. There would be no change for offshore persons who did not qualify for one of the exemptions.

47. *Efficiency of compliance and administration.* Option 3 is slightly better than the status quo. Although offshore persons who qualified for the exemption would have their compliance costs reduced by no longer being required to open a New Zealand bank account, there would be no change for offshore persons who did not qualify for an exemption. The following implications may result:

- Legislating for every single instance would be highly resource-intensive and result in complex rules as cases where difficulties arise are wide-spread. As legislative changes require time to be implemented, it may not suit offshore persons experiencing difficulties with the bank account requirement who need a more urgent response.
- There would be an increase in administration costs due to Inland Revenue having to confirm whether an offshore person claiming to meet an exemption actually did so.

Option 4

48. Option 4 is to remove the requirement for an offshore person to have a New Zealand bank account before they can be issued with an IRD number.

Assessment against criteria – Option 4

49. Option 4 meets the main objective. The removal of the bank account requirement would address the difficulties that offshore persons experience with it.

50. *Robustness of the identity checks.* Option 4 does not meet this criterion. It does not ensure that the Commissioner's identity processes remain robust, as the Commissioner will not be able to rely on the customer due diligence checks performed by financial institutions.

51. *Economic efficiency.* Option 4 is a significant improvement on the status quo. Offshore persons who could not open a New Zealand bank account would be able to obtain IRD numbers and comply with their New Zealand tax obligations and complete commercial transactions.

52. *Efficiency of compliance and administration.* Option 4 is a significant improvement over the status quo. As a New Zealand bank account would no longer be required, offshore persons will not have to be present in New Zealand for the purposes of opening a bank account, and will be able to get an IRD number in a timely manner. Compliance costs for offshore persons will be reduced. Compliance costs for banks will also be reduced as they will no longer have to consider opening accounts for offshore customers who have no other need for a New Zealand bank account. Administration costs will be reduced as Inland Revenue will no longer have to consider whether an offshore person has a functional bank account, and will also not have to consider arrangements where offshore persons are unable to comply with tax or commercial obligations due to being unable to get a bank account and an IRD number.

CONSULTATION

53. In August and September 2016 targeted consultation was undertaken with Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, New Zealand Bankers' Association and the New Zealand Law Society.

54. All submitters have welcomed the review. There was no support for the status quo and all submitters supported reform. Evidence through further examples where the bank account requirement is causing difficulties was provided. Some submitters preferred the removal of the bank account requirement, while others supported the option of Commissioner's discretion and/or further exceptions.

CONCLUSIONS AND RECOMMENDATIONS

55. The following table summarises the consideration of the options from the regulatory analysis section above. Within the overview table the following symbols are used:

- ✓✓ Significantly better than the status quo
- ✓ Better than the status quo
- × Same as the status quo

×× Worse than the status quo

Options	Analysis against the objective and criteria
Option 1 – Status quo	Does not meet the main objective Meets the robustness of identity checks criterion Meets economic efficiency criterion Meets efficiency of compliance and administration criterion
Option 2 – Commissioner discretion	Meets the main objective Robustness of identity checks × Economic efficiency ✓ Efficiency of compliance and administration ✓
Option 3 – Specific legislative exemptions	Does not meet the main objective Robustness of identity checks × Economic efficiency ✓ Efficiency of compliance and administration ✓
Option 4 – Removing requirement for bank account	Meets the main objective Robustness of identity checks ×× Economic efficiency ✓✓ Efficiency of compliance and administration ✓✓

56. Two options meet the main objective (Options 2 and 4), and two do not (Options 1 and 3). Option 2 is better than Option 4 because the robustness of identity checks is better maintained under Option 2. Officials therefore, on balance, recommend Option 2.

57. Since the introduction of the status quo officials have been made aware that the bank account requirement is making it difficult for people to comply with their New Zealand tax obligations. Option 2 will reduce these costs while also allowing for the robustness of the identity checks to be maintained.

58. Option 3 is not preferred. Although it will improve the situation for some offshore persons who cannot open a New Zealand bank account, the exceptions process is lengthy and is not suited for offshore persons who need an IRD number urgently. It will also not resolve the issue for offshore persons who do not qualify for an exception.

59. Although Option 4 rates higher than other options on the efficiency criteria, it is not preferred at this time as the robustness of identity checks will be reduced. However, as indicated in the *Monitoring, Evaluation and Review* section of this RIS, once the second phase of the AML legislation is implemented officials will seek approval to review the bank account requirement again. Such a review may result in a recommendation to remove the bank account requirement.

IMPLEMENTATION

60. Changes to provide the Commissioner with discretion to issue IRD numbers where she is satisfied with the identity of the offshore person would require an amendment to the Tax Administration Act 1994. This amendment would be included in the next available omnibus

tax bill, scheduled for introduction in early 2017. This change would apply from the date of enactment of that bill.

61. This change would reduce compliance costs for offshore persons. It may increase administrative costs. These costs are not expected to be significant.

62. The bill commentary and a *Tax Information Bulletin* article after enactment will explain the changes.

MONITORING, EVALUATION AND REVIEW

63. In general, any changes identified as necessary following enactment would be added to the tax policy work programme, and proposals would go through the Generic Tax Policy Process (GTPP). The GTPP is a multi-stage process that has been used to design tax policy (and subsequently social policy administered by Inland Revenue) in New Zealand since 1995. Opportunities for external consultation are built into various stages of the process. In practice, any changes identified as necessary following enactment will be considered for inclusion in the tax policy work programme, and proposals would go through the GTPP.

64. The scheduled Anti-Money Laundering and Countering of Financing of Terrorism Amendment Bill, promoted by the Minister of Justice, will extend customer due diligence obligations to a wider range of professionals. This is also known as the second phase of AML legislation. It is anticipated that there will be a lead-in period before the amendments are fully implemented, with professionals such as lawyers, conveyancers, accountants, real estate agents, and dealers in some high value goods becoming registered entities on a rolled-out basis by 2020.

65. Following the enactment and the implementation of the scheduled Anti-Money Laundering and Countering of Financing of Terrorism Amendment Bill by 2020, officials will seek approval to review the bank account requirement again.